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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL FAIR HOUSING ALLIANCE;
et al.,

Plaintiffs,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION ("FANNIE MAE"),

Defendant.

Case No. 4:16-cv-06969-JSW

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED]
ORDER**

1 The parties to the above-entitled action jointly submit this JOINT CASE
2 MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the [Standing Order for All](#)
3 [Judges of the Northern District of California](#) and [Civil Local Rule 16-9](#).

4 **1. Jurisdiction & Service**

5 *The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's*
6 *counterclaims, whether any issues exist regarding persona jurisdiction or venue, whether any*
7 *parties remain to be served, and, if any parties remain to be served, a proposed deadline for*
8 *service.*

9 **A. Plaintiffs' Position.**

10 The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
11 1332, 2201, and 2202, and 42 U.S.C. § 3613(a). There are no issues concerning personal
12 jurisdiction, venue, or service.

13 **B. Fannie Mae's Position.**

14 Fannie Mae disputes that plaintiffs have organizational standing, and therefore disputes
15 that the Court has subject matter jurisdiction over this action.

16 **2. Facts**

17 *A brief chronology of the facts and a statement of the principal factual issues in dispute.*

18 **A. Plaintiffs' Position.**

19 Fannie Mae is required, under the Fair Housing Act, to maintain all REO properties,
20 regardless of their location, without regard to race, national origin, or racial composition of
21 neighborhood. Between July 2011 and October 2015, Plaintiffs conducted a comprehensive
22 investigation of Fannie Mae's real estate related activities in communities of color, including
23 predominantly African-American and Latino neighborhoods, and predominantly white
24 neighborhoods in 38 metropolitan areas throughout the United States. Plaintiffs' investigation
25 revealed that Fannie Mae and its agents have failed to conduct routine exterior maintenance and
26 marketing of REO properties in communities of color, thereby leaving those REO properties in a
27 state of neglect, while satisfactorily conducting routine exterior maintenance and marketing of its
28 REO properties in predominantly white neighborhoods, therefore leaving those REO properties in

1 a materially better condition. This behavior violates the Fair Housing Act.

2 In addition, Fannie Mae has designed a national practice and policy of having its lower-
3 level agents and employees determine whether to conduct an REO exterior maintenance task and
4 how to conduct it. Fannie Mae's practice gave these agents and employees the ability to exercise
5 high levels of discretion with minimal input from Fannie Mae. This practice and policy of
6 committing REO exterior maintenance decisions to the subjective and unguided discretion of its
7 lower-level agents has caused a disproportionately adverse impact on communities of color. This
8 unguided delegation of discretion without independent quality checks resulted in REO properties
9 in communities of color receiving less exterior maintenance than REO properties in
10 predominantly white neighborhoods. Statistically significant disparities were found even after
11 controlling for a host of potentially explanatory variables.

12 Plaintiffs alerted Fannie Mae regarding the findings of their investigation in order to
13 secure voluntary compliance with the Fair Housing Act, but Fannie Mae did not change its
14 behavior. With discriminatory intent and deliberate indifference to the discriminatory purpose and
15 effects of its policies and practices, Fannie Mae continued to maintain its REO properties
16 differently because of the predominant race and national origin of neighborhoods. As a result of
17 these practices, Fannie Mae's actions stigmatize communities of color as less desirable than
18 predominantly white neighborhoods. The prospects for integration in the affected neighborhoods
19 are reduced because white buyers are deterred from purchasing homes in neighborhoods with
20 poorly maintained REO properties, and perpetuates the existing patterns of racial segregation in
21 the relevant neighborhoods.

22 Defendant Fannie Mae admits that it contracted with several companies to perform
23 maintenance services on Fannie Mae's REO properties in all 50 states during the time periods
24 relevant to the First Amended Complaint. Fannie Mae admits that it met with plaintiff NFHA on
25 several occasions before Plaintiffs filed this lawsuit, and NFHA provided Fannie Mae with
26 extensive information and evidence of the discriminatory effect and purpose of its policies
27 applied to Fannie Mae-owned REO properties.

28 The following fact allegations made in Plaintiffs' Amended Complaint are also in dispute:

- When and how Fannie Mae learned of the disparity in exterior maintenance and marketing of Fannie REO properties;
- The scope of the disparity, on the basis of race, color, and national origin, in exterior maintenance and marketing of Fannie REO properties;
- What, if any, direction and supervision Fannie Mae provided to its agents with respect to the exterior maintenance and marketing of Fannie REO properties during the liability period;
- The frequency, nature, and quality of exterior maintenance and marketing performed on Fannie REO properties during the liability period; and
- The extent of the harm inflicted on each Plaintiff as a result of Fannie Mae's discriminatory practices.

B. Fannie Mae's Position.

Fannie Mae did not discriminate against minorities in any way with respect to the maintenance of its REO properties. Fannie Mae did not "design[] a national practice and policy" that "caused a disproportionately adverse impact on communities of color." Fannie Mae did not "maintain its REO properties differently because of the predominant race and national origin of neighborhoods," deliberately or otherwise. Moreover, Fannie Mae disputes that it caused plaintiffs any harm, be it via a diversion of resources, a frustration of plaintiffs' mission, harming the communities that plaintiffs purport to serve, or impeding plaintiffs' community investment programs.

Plaintiffs allege that Fannie Mae's delegation of discretion to its REO maintenance vendors, and the manner in which the vendors exercised that discretion, caused an unlawful disparate impact, on the basis of race, within each of 38 specified metropolitan areas. Plaintiffs also allege that Fannie Mae engaged in disparate treatment with respect to maintaining its REO properties by failing to change its REO maintenance practices when plaintiffs told Fannie Mae that Fannie Mae's REO maintenance vendors' actions were having a discriminatory impact on minority communities. The facts do not support either theory of discrimination.

1 First, Fannie Mae has never had a policy of delegating “unguided discretion” to REO
2 maintenance vendors that permits them to discriminate on the basis of race. Rather, Fannie Mae
3 has consistently required vendors to meet uniform maintenance standards, which are designed to
4 preserve the value of Fannie Mae-owned REO properties regardless of the property’s location.
5 Moreover, Fannie Mae’s policies expressly prohibit discrimination on the basis of race. And the
6 vendors’ performance is subject to quality checks by independent contractors. Fannie Mae
7 anticipates that a well-conducted analysis of Fannie Mae’s REO maintenance practices would
8 conclude that Fannie Mae’s REO maintenance practices—and specifically, the policy plaintiffs’
9 challenge here of delegating to vendors the responsibility to perform maintenance to Fannie
10 Mae’s specifications—have had no disparate impact on the basis of race.

11 Plaintiffs’ investigation was all but designed to reach a different conclusion based on a
12 fundamentally flawed methodology. Plaintiffs did not conduct a comprehensive assessment of
13 Fannie Mae’s REO maintenance practices. Rather, plaintiffs deliberately ignored properties
14 where REO maintenance appeared to be underway. They also conducted single-point-in-time
15 visits that failed to capture Fannie Mae’s ongoing maintenance activities at its REO properties.
16 Plaintiffs also selected properties for inclusion in their investigation from only a subset of zip
17 codes within particular metropolitan areas—those “with the highest foreclosure rates” (Am.
18 Compl. ¶ 59)—resulting in a biased sample set. Finally, Plaintiffs made no effort to assess
19 whether Fannie Mae’s REO maintenance practices impacted the availability or pricing of housing
20 in the specified metropolitan areas on the basis of race. Plaintiffs’ flawed analytical framework
21 and resulting defective conclusions cannot be used to show what plaintiffs claim—that Fannie
22 Mae’s REO maintenance practices had a disparate impact on housing availability on the basis of
23 race within the 38 metropolitan areas that are the subject of plaintiffs’ complaint. *See, e.g., HUD,*
24 *Determination of No Reasonable Cause, Nat’l Fair Hous. Alliance v. U.S. Bank N.A., Case No.*
25 *01-12-0283-8 (Jan. 8, 2016) (concluding that it was logically impossible to establish disparate*
26 *impact based on the same investigative methodology NFHA used here).*

27 Second, while Fannie Mae disputes that NFHA provided the company with extensive
28 “evidence of the discriminatory effect and purpose” of any Fannie Mae policy, Fannie Mae did

1 not ignore concerns raised by NFHA regarding the maintenance of REO properties. In fact, in
2 2009, Fannie Mae provided a grant to NFHA specifically to support the organization's
3 investigation of potential discrimination in lenders' REO maintenance practices. Moreover,
4 Fannie Mae met repeatedly with NFHA to discuss the results of that organization's investigations.
5 After Fannie Mae and NFHA's initial meetings, NFHA publicly acknowledged that Fannie Mae
6 "took corrective action" as a result of NFHA's investigations, including by "ask[ing] NFHA to
7 update Fannie Mae's fair lending training program to provide a module on REO disposition and
8 fair housing," and "provid[ing] a new grant to NFHA that includes funding to assist in the
9 development of an online training program for real estate agents who list, market and sell
10 REOs."¹

11 Fannie Mae continued meeting with NFHA in the years leading up to plaintiffs' filing of
12 their complaint, but NFHA's contributions during those meetings became less effective and less
13 constructive. NFHA frequently refused to provide support for its assertions of discriminatory
14 practices or impact on the part of Fannie Mae. When NFHA did present Fannie Mae with
15 purported "evidence" of its findings, the evidence often related to properties not owned by Fannie
16 Mae or was based on site visits conducted a few days before scheduled REO maintenance was
17 performed. In such instances, NFHA's alleged evidence of discriminatory practices was
18 uninformative and unhelpful. NFHA also failed to account for other critical factors in its
19 investigations, such as the properties' condition at the time they became owned by Fannie Mae,
20 which bears on the degree to which exterior maintenance deficiencies should be attributed to
21 Fannie Mae or its vendors; and whether the purported REO deficiencies identified by NFHA,
22 such as boarded-up windows, reflected compliance with local ordinances rather than maintenance
23 failures.

24 Notwithstanding the defects in NFHA's investigation—which Fannie Mae explained to
25 NFHA in good faith, informed by Fannie Mae's own independent evaluation of the properties that

26 ¹ NFHA, "Here Comes the Bank, There Goes Our Neighborhood: How Lenders Discriminate in
27 the Treatment of Foreclosed Homes," (Apr. 11, 2011), *available at*
28 <https://nationalfairhousing.org/wp-content/uploads/2017/04/There-Goes-Our-Neighborhood-REO-report-2011-for-website.pdf>.

1 were the subject of NFHA’s investigation—Fannie Mae nevertheless endeavored to build upon its
2 already robust anti-discriminatory policies and practices. Thus, before plaintiffs filed their HUD
3 complaint in 2015—and well before plaintiffs filed their amended complaint in this action in
4 2018 alleging that Fannie Mae engaged in disparate treatment—Fannie Mae had already
5 implemented numerous enhancements to its REO maintenance practices. These enhancements
6 included:

- 7 • increasing quality control inspections of work performed by maintenance vendors in
8 minority neighborhoods from 30 percent of properties to 100 percent of properties;
- 9 • creating new management-level positions within Fannie Mae to oversee vendor
10 quality;
- 11 • revising maintenance contracts to expand allowable expenses and increase the
12 frequency of exterior services;
- 13 • replacing the use of plywood with clear-board and retro-fitting over 4,000 properties
14 with clear-board, with the intended effect of improving the exterior appearance of the
15 properties; and
- 16 • improving tools for neighbors to report concerns about REO property conditions
17 directly with Fannie Mae.

18 Rather than ignore NFHA’s concerns about potential discriminatory REO practices, Fannie Mae
19 took those concerns seriously and took numerous concrete steps to mitigate those concerns.

20 **3. Legal Issues**

21 *A brief statement, without extended legal argument, of the disputed points of law,*
22 *including reference to specific statutes and decisions.*

23 **A. Plaintiffs’ Position.**

24 The parties dispute several points of law relevant to this case, including the following:

- 25 • Plaintiffs have standing under the Fair Housing Act;
- 26 • Fannie Mae’s policy of delegating discretion to lower level employees or
27 contractors, or failing to adequately supervise them, gives rise to a disparate
28 impact claim in violation of the Fair Housing Act;

- Fannie Mae’s deliberate indifference to, or knowing disregard of, discriminatory behavior gives rise to a claim of intentional discrimination under the Fair Housing Act; and
- Fannie Mae is subject to liability for punitive damages or attorneys’ fees for their discriminatory conduct.

B. Fannie Mae’s Position.

The parties dispute whether plaintiffs have organizational standing, whether plaintiffs can demonstrate any infringement of FHA-protected rights, whether plaintiffs can show unlawful disparate treatment on the basis of race under Supreme Court and Ninth Circuit precedent, whether plaintiffs can show disparate impact under Supreme Court precedent, whether Fannie Mae’s use of vendors to perform maintenance functions constitutes a policy that can give rise to a disparate impact claim, whether plaintiffs suffered damages caused by Fannie Mae’s alleged delegation of discretion to vendors, whether the FHA’s statute of limitations bars plaintiffs’ claims in whole or in part, and whether Fannie Mae may be held liable for the acts of its REO maintenance vendors. This Court has already ruled as a matter of law that Fannie Mae is not liable for punitive damages with respect to plaintiffs’ claims. (Dkt. 70 at 10–11.)

Standing. To establish organizational standing, each plaintiff will have to show that it diverted resources specifically to combat Fannie Mae’s alleged discriminatory REO maintenance and that it suffered a frustration of its organizational mission. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004).² Plaintiffs allege that they diverted resources and time away from other intended projects and programs, and that they engaged in “community outreach and public education efforts.” (E.g., Am. Compl. ¶¶ 199–200.) But plaintiffs received grant funding from the U.S. Department of Housing and Urban Development—and from Fannie Mae—specifically to perform the investigation that is the subject of their complaint. Thus, to the extent

² Plaintiffs conceded at dismissal that they do not have representational standing to pursue claims on behalf of the residents of the communities that were the subject of their investigation. (See MTD, Dkt. 29, at 20 (arguing that plaintiffs do not assert representations standing to represent any neighborhood residents, potential homebuyers, or local governments referenced in plaintiffs’ allegations); Pls.’ Opp. to MTD, Dkt. 30, at 20–24 (arguing only that plaintiffs have organizational standing).)

1 plaintiffs conducted their investigation and outreach programs with resources specifically
2 allocated to REO maintenance investigations, they cannot have diverted such resources from
3 other projects. Moreover, plaintiffs' missions are to "to ensure equal housing opportunities and to
4 fight unlawful discrimination and segregation." (E.g., Am. Compl. ¶ 201.) Plaintiffs'
5 investigation to assess whether Fannie Mae and other housing industry participants are engaging
6 in discriminatory conduct is inherent to that very mission, and their mission cannot have been
7 frustrated by actions that plaintiffs would have taken anyway.

8 ***Infringement of an FHA-Protected Right.*** It is not enough that plaintiffs show that
9 different REO properties in different neighborhoods were in different states of exterior condition
10 on the date plaintiffs visited each property. To maintain a viable claim under the FHA, plaintiffs
11 must show that:

- 12 • Fannie Mae's alleged policy of delegating REO maintenance functions to vendors
13 made properties unavailable to persons because of race, 42 U.S.C. §§ 3604(a),
14 3605, 24 C.F.R. § 100.70(c)(1);
- 15 • Fannie Mae's alleged REO maintenance policy, with respect to REO properties
16 that were for sale or rent, discriminated against persons because of race, such that
17 the sale or rental terms of the properties differed based on race, 42 U.S.C.
18 § 3604(b), 24 C.F.R. § 100.65; and
- 19 • Fannie Mae took an adverse action against neighbors of its REO properties in
20 retaliation for the neighbors' exercise or enjoyment of FHA-protected rights, 42
21 U.S.C. § 3617.

22 Plaintiffs have not alleged that any of these outcomes have occurred, but instead have pursued an
23 unprecedented theory untethered to the rights protected by the FHA.

24 ***Disparate Treatment.*** To show disparate treatment, plaintiffs must establish that Fannie
25 Mae acted with intent to discriminate on the basis of race. Plaintiffs base their disparate treatment
26 claim on the theory that Fannie Mae failed to change its behavior following pre-suit meetings
27 with NFHA in which NFHA identified a purported disparate impact. But to show intentional
28 discrimination, a defendant must have failed to take action to stop known instances of intentional

1 discrimination. *See, e.g., Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 642 (1999) (school
2 district liable for intentional discrimination under Title IX where it was deliberately indifferent to
3 known acts of intentional teacher-student discrimination). Plaintiffs will not be able to establish
4 that Fannie Mae’s REO maintenance vendors engaged in any intentional discrimination, much
5 less that Fannie Mae knew that its vendors had engaged in intentional discrimination based on the
6 information NFHA provided to Fannie Mae during the parties’ pre-suit meetings. Nor will
7 plaintiffs be able to show that Fannie Mae failed to take appropriate corrective action based on
8 the information NFHA provided.

9 ***Disparate Impact.*** Plaintiffs will have to show (1) a statistical disparity in the availability
10 of housing, the terms and conditions of housing, or in the provision of services to retained
11 properties; (2) on the basis of race; (3) that was caused by Fannie Mae’s alleged policy of
12 delegating REO maintenance functions to vendors. *See Tex. Dep’t of Hous. & Cmty. Affairs v.*
13 *Inclusive Cmty. Project, Inc.*, 135 S.Ct. 2507, 2523 (2015); 42 U.S.C. §§ 3604(a)-(b), 3605; 24
14 C.F.R. §§ 100.65, 100.70. Moreover, plaintiffs cannot establish their disparate-impact claim
15 unless they demonstrate “robust causality” between Fannie Mae’s policy or policies and a
16 statistical disparity. *Inclusive Cmty.*, 135 S.Ct. at 2523. Plaintiffs must also demonstrate a
17 statistical disparity within the FHA’s two-year statute of limitations. *City of Los Angeles v. Wells*
18 *Fargo & Co.*, No. 13-cv-09007, 2015 WL 4398858, at *7 (C.D. Cal. July 17, 2015) (granting
19 summary judgment of FHA claims where plaintiffs failed to demonstrate a statistical disparity
20 within the limitations period). Plaintiffs will not be able to show an unlawful disparate impact on
21 the basis of race under *Inclusive Communities*.

22 ***Policy Relating to Fannie Mae’s Use of Vendors to Perform REO Maintenance***
23 ***Functions.*** Each of plaintiffs’ claims is based on an alleged Fannie Mae policy of delegating
24 “unguided discretion” to the vendors that maintain Fannie Mae’s REO properties, and the
25 allegation that Fannie Mae’s vendors exercised their discretion in a way that caused
26 discriminatory outcomes. But even if such an alleged policy could form the basis of an FHA
27 claim, plaintiffs cannot establish that Fannie Mae had a policy of delegating a level of discretion
28 to REO maintenance vendors that permitted them to discriminate on the basis of race. Rather,

1 Fannie Mae has consistently required vendors to meet uniform maintenance standards designed to
2 preserve the value of Fannie Mae-owned REO properties regardless of the property's location,
3 Fannie Mae maintains controls to ensure the vendors satisfy Fannie Mae's requirements, and
4 Fannie Mae's policies expressly prohibit discrimination on the basis of race.

5 ***Damages and Causation.*** To recover under the FHA, plaintiffs must show that they
6 suffered damages directly caused by the Fannie Mae policy plaintiffs challenge—*i.e.*, delegation
7 of REO maintenance functions to vendors. *See, e.g., Bank of Am. Corp. v. City of Miami*, 137 S.
8 Ct. 1296, 1306 (2017) (holding that “proximate cause under the FHA requires some direct
9 relation between the injury asserted and the injurious conduct alleged,” and that mere
10 foreseeability of harm is insufficient to establish proximate cause); *cf. Inclusive Cmtys.*, 135 S.Ct.
11 at 2523 (requiring a “robust” causal link between the defendant’s practices and the alleged
12 discriminatory outcomes to establish a prima facie disparate impact claim under the FHA).
13 Organizational plaintiffs may recover actual damages resulting only from a “diversion of
14 resources,” and from a “frustration of mission” caused by the defendant’s unlawful actions. *See*
15 *Fair Hous. of Marin v. Combs*, No. 97-cv-01247, 2000 WL 365029, at *3–4 (N.D. Cal. Mar. 29,
16 2000) (explaining that “diversion of resources” damages generally include recruitment and
17 training costs, worker time, and expenses incurred in investigating the defendant’s conduct, and
18 that “frustration of mission” damages generally include expenditures on education, counseling, or
19 outreach that is “necessary to counterbalance the effects of a defendant’s discriminatory
20 practices”); 42 U.S.C. § 3613(c).

21 Plaintiffs purport to claim as a basis for their damages expenditures on “education,
22 advocacy, and training programs designed to promote fair housing and fair lending,” devotion of
23 “time to evaluating properties, reviewing data, interviewing witnesses,” and frustration of
24 plaintiffs’ “missions of increasing fair and equal access to housing for all Americans and in all
25 neighborhoods, regardless of race, color, or national origin.” (*E.g.*, Am. Compl. ¶ 188.) But
26 plaintiffs’ very mission is to “ensure equal housing opportunities and to fight unlawful
27 discrimination and segregation.” (*E.g.*, Am. Compl. ¶ 201.) Moreover, plaintiffs’ investigation
28 was part of a broader inspection of industrywide REO maintenance practices—including those of

1 Freddie Mac, Wells Fargo, Bank of America, and other institutional REO owners—and thus the
2 funds plaintiffs expended to conduct that inspection cannot be attributed to Fannie Mae. Further,
3 plaintiffs secured grant funding for the specific purpose of conducting their investigation.
4 Plaintiffs cannot claim that Fannie Mae caused them any damages relating to educational and
5 investigative activities plaintiffs would have undertaken regardless of the alleged Fannie Mae
6 REO maintenance policy at issue. *See, e.g., Combs*, 2000 WL 365029, at *3 (rejecting damages
7 amounts expended in support of a program unrelated to the defendant’s discriminatory practices).

8 Further, plaintiffs purport to claim as damages harm to “the communities that plaintiffs
9 serve,” and impediments to plaintiffs’ “community investment programs designed to stabilize
10 neighborhoods of color and increase homeownership for all people in these same neighborhoods.”
11 (Am. Compl. ¶¶ 185–86, 188, 192.) But these are not alleged harms for which damages are
12 recoverable under the FHA. *Combs*, 2000 WL 365029, at *3–4 (both “diversion of resources”
13 damages and “frustration of mission” damages are measured based on plaintiffs’ expenditures in
14 investigating and counteracting the defendant’s unlawful conduct). Moreover, plaintiffs
15 acknowledge and specifically allege that harms to plaintiffs’ communities were caused by others
16 long before Fannie Mae engaged in any of the allegedly discriminatory REO maintenance
17 practices that are the subject of plaintiffs’ claims. (*E.g.*, Am. Compl. ¶ 184 (“From the 1990s
18 through 2008, many financial institutions in the country engaged in persistent discrimination and
19 reverse redlining to target minority neighborhoods for high-priced, high risk mortgages.”).)
20 Relatedly, plaintiffs cannot recover damages for any alleged harm to neighborhood residents,
21 potential homebuyers, or local governments referenced in plaintiffs’ Amended Complaint—to the
22 extent plaintiffs seek to recover such amounts—because plaintiffs lack representational standing
23 to recover damages for harms felt by such persons or entities. *See id.* (*See also supra*, n.2.)

24 Even if plaintiffs had representational standing and damages for such harms were
25 recoverable, plaintiffs cannot show that Fannie Mae’s alleged policy of delegating REO
26 maintenance functions to vendors directly impacted property values and the health and safety of
27 community residents, or perpetuated segregation, especially given that the harms about which
28 plaintiffs complain were caused by entities other than Fannie Mae. *See, e.g., City of Miami*, 137

1 S. Ct. at 1306 (damages and defendant’s allegedly discriminatory conduct must be directly related
2 to one another); *Nat’l Fair Hous. All. v. Deutsche Bank Nat’l Tr.*, No. 18-cv-839, 2019 WL
3 5963633, at *8 (N.D. Ill. Nov. 13, 2019) (dismissing plaintiffs’ claim for damages based on
4 alleged harm to communities). Accordingly, plaintiffs will not be able to establish that Fannie
5 Mae’s alleged policy of delegating REO maintenance functions to vendors directly caused
6 plaintiffs’ purported damages based on any of plaintiffs’ frustration-of-mission theories. *See*
7 *Deutsche Bank*, 2019 WL 5963633, at *7–8.

8 ***Statute of Limitations.*** Plaintiffs must demonstrate that the alleged discrimination
9 occurred within the FHA’s two-year limitations period, which began to run no earlier than May
10 12, 2013—two years before plaintiffs’ filed their complaint against Fannie Mae with HUD. *See*
11 42 U.S.C. § 3613(a) (establishing a two-year limitations period, which excludes time during
12 which an administrative proceeding is pending based on the alleged discriminatory practice); *City*
13 *of Los Angeles*, 2015 WL 4398858, at *4 (“Any claim under the [FHA] must be brought within
14 two years of the occurrence or termination of an alleged discriminatory housing practice.”)
15 (internal quotation marks omitted). Because plaintiffs commenced their investigation in 2009,
16 many of the amounts plaintiffs will attempt to claim as damages likely were incurred before the
17 beginning of the statute of limitations period on May 12, 2013. This will likewise be true of the
18 diversion of resources or frustration of mission that some or all plaintiffs will seek to leverage as
19 support for their assertion of standing. Thus, Fannie Mae expects to show that some or all
20 plaintiffs did not sustain damages or injury sufficient to support standing within the statute of
21 limitations period, and that some or all of plaintiffs’ individual claims will be precluded by the
22 application of the statute of limitations to liability.

23 ***Fannie Mae’s Liability for the Acts of Its Vendors.*** The *Merrill Doctrine* provides that
24 government instrumentalities cannot be held liable for unauthorized, unlawful acts of their agents.
25 *See, e.g., Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947); *Faiella v. Fed. Nat’l Mortg.*
26 *Ass’n*, 928 F.3d 141, 149 (1st Cir. 2019) (holding that Fannie Mae is a federal instrumentality for
27 purposes of the *Merrill* doctrine and affirming summary judgment in Fannie Mae’s favor). To the
28 extent plaintiffs’ claims are based on the acts of Fannie Mae’s REO maintenance vendors,

1 plaintiffs will have to show that the *Merrill Doctrine* does not apply, or that Fannie Mae expressly
2 authorized its vendors to engage in the allegedly discriminatory conduct.

3 **4. Motions**

4 *All prior and pending motions, their current status, and any anticipated motions.*

5 The Court granted in part and denied in part Fannie Mae's motions to dismiss (see Orders
6 at Dkt. 38, 70), and has ruled on all prior administrative motions. There are no motions pending
7 at this time.

8 **A. Plaintiffs' Anticipated Motions.**

9 Plaintiffs are not presently contemplating any non-administrative motions.

10 **B. Fannie Mae's Anticipated Motions.**

11 Fannie Mae intends to move for summary judgment after the close of all discovery.
12 Fannie Mae also anticipates that targeted briefing on the following issues, potentially through one
13 or more early motions for summary judgment, may substantially narrow the issues at trial.

14 First, discovery may confirm that Fannie Mae's alleged policy of delegating REO
15 maintenance functions to vendors, which plaintiffs allege caused the discriminatory outcomes on
16 which plaintiffs base their claims, did not directly cause some or all of plaintiffs' alleged
17 damages. *E.g., City of Miami*, 137 S. Ct. at 1306 (direct relationship between unlawful conduct
18 and alleged injury required to establish proximate cause under the FHA); *Deutsche Bank*, 2019
19 WL 5963633, at *7–8 (dismissing organizational plaintiffs' claims for categories of damages not
20 directly caused by the defendants' allegedly discriminatory REO maintenance conduct); *Combs*,
21 2000 WL 365029, at *3 (rejecting damages claims to the extent the amounts were not aimed at
22 investigating and redressing the defendant's discrimination, and to the extent the plaintiff did not
23 demonstrate a "nexus between" the defendant's conduct and plaintiff's claimed damages).

24 Second, discovery may confirm that some or all plaintiffs lack organizational standing.
25 *See, e.g., Friends of the Earth v. Sanderson Farms, Inc.*, No. 17-cv-03592, 2019 WL 3457787, at
26 *5 (N.D. Cal. July 31, 2019) (dismissing claims for lack of organizational standing where
27 discovery showed that plaintiffs would have undertaken the same actions regardless of the
28 defendant's conduct, and that plaintiffs therefore "did not divert resources because of" the

1 defendant's conduct). For example, as discussed above, Fannie Mae intends to demonstrate that
2 some or all plaintiffs received resources specifically earmarked for the investigation they
3 performed and/or that they would have undertaken the same activities regardless of Fannie Mae's
4 alleged policy of delegating REO maintenance functions to vendors. If true, plaintiffs did not
5 "divert" any resources as a result of Fannie Mae's specific REO maintenance policy.

6 Third, the statute of limitations may bar plaintiffs' claims with respect to a subset of the
7 metropolitan areas identified in the Amended Complaint based on the dates on which plaintiffs
8 inspected Fannie Mae-owned REO properties in these metropolitan areas. *See, e.g., City of Los*
9 *Angeles*, 2015 WL 4398858, at *7 (granting summary judgment of FHA claims where plaintiffs
10 failed to demonstrate a statistical disparity within the limitations period). For example, discovery
11 may show that plaintiffs' investigation within certain metropolitan areas occurred entirely outside
12 the limitations period. This would preclude any liability or damages based on such an
13 investigation.

14 Fourth, plaintiffs cannot demonstrate a statistically significant disparate impact within a
15 subset of the metropolitan areas identified in plaintiffs' Amended Complaint given the small
16 number of Fannie Mae-owned REO properties in these metropolitan areas. *See, e.g., id.*, at *7
17 (granting summary judgment of FHA claims where any disparities were not statistically
18 significant given the small number of loans at issue available in the data). For example,
19 discovery may show that plaintiffs visited too small a number of properties within a given
20 metropolitan area for their analytical conclusions based on their investigation to be reliably
21 extrapolated to the entire metropolitan area using sound statistical methodologies and without
22 violating Fannie Mae's due process rights.

23 **5. Amendment of Pleadings**

24 *The extent to which parties, claims, or defenses are expected to be added or dismissed and*
25 *a proposed deadline for amending the pleadings.*

26 Plaintiffs amended their original complaint on April 10, 2018 (Dkt. No. 39). The parties'
27 proposed deadline for amendment of pleadings is March 13, 2020, or ninety days after the Case
28 Management Conference, to allow for sufficient time for the parties to exchange initial discovery

1 before the amendment deadline.

2 **6. Evidence Preservation**

3 *A brief report certifying that the parties have reviewed the Guidelines Relating to the*
4 *Discovery of Electronically Stored Information (“ESI Guidelines”), and confirming that the*
5 *parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and*
6 *proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this*
7 *action. See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*

8 The parties have reviewed the Guidelines Relating to the Discovery of Electronically
9 Stored Information and have begun to meet and confer regarding reasonable and proportionate
10 steps taken to preserve evidence in accordance with applicable rules and case law.

11 **7. Disclosures**

12 *Whether there has been full and timely compliance with the initial disclosure*
13 *requirements of Fed. R. Civ. P. 26 and a description of the disclosures made. For ADA and*
14 *employment cases, see General Order Nos. 56 and 71.*

15 The parties have not exchanged any disclosures to date. Pursuant to Rule 26(a)(1)(C), the
16 parties stipulate to the exchange of initial disclosures on or before January 13, 2020, or thirty days
17 after the Case Management Conference.

18 **8. Discovery**

19 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed*
20 *limitations or modifications of the discovery rules, a brief report on whether the parties have*
21 *considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to*
22 *Fed. R. Civ. P. 26(f), and any identified discovery disputes.*

23 **Discovery Taken To Date.** On November 21, 2019, Fannie Mae propounded ninety-nine
24 requests for production, sixteen interrogatories, and four requests for admission to Plaintiff
25 National Fair Housing Alliance. On November 22, 2019, Fannie Mae propounded four
26 interrogatories to the remaining twenty plaintiffs.

27 **Discovery Scope.** The parties have met and conferred and begun the process of
28 negotiating a stipulated e-discovery order, a proposed discovery plan, and a protective order,

1 which they will submit to the Court as soon as practicable. During the discovery period, the
2 parties intend to propound written discovery, conduct depositions of Rule 30(b)(6) corporate
3 representatives and fact witnesses, propound subpoenas to third parties, and conduct expert
4 discovery.

5 **A. Plaintiffs' Position.**

6 Plaintiffs anticipate that, given the geographic scope of the case and the extended period
7 of alleged liability, the parties will need 50 interrogatories and at least 50 depositions per side;
8 however, until some discovery is exchanged, they are uncertain as to an exact number of
9 depositions.

10 Plaintiffs anticipate needing at least 50 depositions due to the number of Fannie Mae
11 employees who have knowledge of its nationwide REO program; the number of Fannie Mae
12 employees who met with NFHA representatives to discuss the results of Plaintiffs' investigation;
13 and the number of potentially relevant third-party witnesses. For example, Plaintiffs intend to
14 depose: Fannie Mae REO regional and corporate managers (at least 10); Fannie Mae REO quality
15 control specialists (unknown number, but approximately 10); Fannie Mae REO vendor managers
16 and subcontractors (unknown number, but approximately 10); Fannie Mae employees and former
17 employees who met with NFHA (at least 10); Fannie Mae employees responsible for code
18 compliance issues (unknown number, but approximately 10); representatives of each of Fannie
19 Mae's outside maintenance vendors (at least 5); representatives from Freddie Mac (at least 3);
20 and real estate agents with knowledge of Fannie Mae properties (unknown number).

21 Fannie Mae is incorrect that Plaintiffs seek 50 depositions of Fannie Mae employees; the
22 number includes Plaintiffs' approximation of third-party depositions, as well.

23 Fannie Mae's proposal that it can take 21 depositions but Plaintiffs can only take 10 is
24 untenable. As Fannie Mae is well-aware, this case is not simply about the existence of a policy.
25 Fannie Mae suggests that, because Plaintiffs have pled a nationwide policy, they are
26 "unreasonable" in seeking depositions of the key regional executors of REO decisions--all the
27 while ignoring the fact that Fannie Mae has denied the existence of this policy and that Plaintiffs
28 are entitled to probe that defense. Fannie Mae's own recitation of facts as stated *supra* Section

1 2(b) refers to numerous Fannie Mae employees who have personal knowledge of the issues and
2 defenses relevant to this case, including those who communicated with NFHA during numerous
3 meetings; Fannie Mae’s vendors; Fannie Mae employees who performed “Fannie Mae’s own
4 independent evaluation of the properties;” employees tasked with quality control; and so on.

5 Fannie Mae seeks to expand the Federal Rules’ default of 25 interrogatories to 525
6 interrogatories, while simultaneously urging the Court to confine Plaintiffs to 10 depositions.³
7 The same “good cause” standard applies in both situations. Therefore, Fannie Mae’s arguments
8 against expanding the number of depositions are undermined by its own request for *more than 20*
9 *times* 25 interrogatories. Regardless of Defendant’s attempt at a technical reading of a difference
10 between interrogatory and deposition limits, it is nonsensical to allow Defendant 525
11 interrogatories and Plaintiffs 10 depositions. Plaintiffs’ approach of 50 interrogatories (instead of
12 Fannie Mae’s suggestion of 525) and 50 depositions (instead of 21 for Defendant and 10 for
13 Plaintiffs) per side is more balanced and appropriate.

14 Finally, Plaintiffs also do not agree that they will only depose Fannie Mae once; given the
15 scope of Plaintiffs’ allegations and Fannie Mae’s corporate structure, it is likely that they will
16 need to issue more than one 30(b)(6) deposition notice. In fact, it may be efficient to have a
17 30(b)(6) deposition early in discovery (for example, regarding preservation and location of
18 documents) and then another 30(b)(6) deposition later in the discovery period. Such an approach
19 is efficient in terms of number of depositions. In sum, Plaintiffs agree to treat a 30(b)(6)
20 deposition of Fannie Mae as one deposition for purposes of counting, but Plaintiffs may need to
21 issue more than one 30(b)(6) notice during the discovery period.

22 **B. Fannie Mae’s Position.**

23 ***Interrogatories.*** Fannie Mae proposes that the Federal Rules of Civil Procedure govern
24 the number of interrogatories each party may serve (25 interrogatories per *party*). Fed. R. Civ. P.

26
27 ³ Notably, Fannie Mae is not taking the position that all Plaintiffs must respond to 25
28 interrogatories (including, for example, about their distinct damages), but instead saying that
Fannie Mae gets 525 distinct interrogatories (and Plaintiffs get a total of 10 depositions).

33 (“[A] party may serve on any other party no more than 25 written interrogatories . . .”).⁴

There are twenty-one plaintiffs in this action, each of whom (1) alleges that it undertook separate actions in the metropolitan area it allegedly serves to investigate Fannie Mae’s REO maintenance, (2) must establish standing based on its own diversion of resources and frustration of mission, and (3) must establish its own damages. It would be prejudicial to limit each *side* to 50 interrogatories at this time—thereby reducing the number of interrogatories Fannie Mae would otherwise be entitled to serve under the Federal Rules by more than a factor of ten—when Fannie Mae needs distinct discovery from 21 plaintiffs.

Depositions. Fannie Mae proposes that (a) each party may be deposed once, and (b) each side may take nine additional depositions. Plaintiffs’ proposal to depose at least 40 and perhaps more than 50 current and former employees of Fannie Mae regarding Fannie Mae’s REO practices, conduct multiple 30(b)(6) depositions, and depose an unspecified number of third parties is excessive. Rule 30’s limit of ten depositions per side should be amended in this case at this time solely to account for the fact that there are 21 plaintiffs in the case, each of which should be subject to deposition. No further departure from Rule 30 is warranted at this time.

There is no need to preauthorize more than five times the number of depositions for which Rule 30 provides when no discovery responses have yet been served by either party, no potential witness has been identified, and without any showing of good cause. *Compare* Fed. R. Civ. P. 30(a)(2)(A)(i) (“A party must obtain leave of court [to take a deposition if] . . . the deposition would result in more than 10 depositions being taken . . . by the plaintiffs, or by the defendants . . .”); *Thykkuttathil v. Keese*, 294 F.R.D. 597, 598–99 (W.D. Wash. 2013) (holding that Rule 30 is “unambiguous in limiting depositions to ten per side,” including in multi-party cases) (collecting cases). Should either party believe, as discovery proceeds, that specific additional depositions are warranted, they could so stipulate at that time; or, in the event of a disagreement about whether good cause exists to permit additional depositions, the parties may seek leave of

⁴ Plaintiffs mischaracterize Fannie Mae’s proposal as seeking to “expand the Federal Rules’ default of 25 interrogatories to 525 interrogatories” by ignoring that whereas Rule 30 limits depositions to ten per side, Rule 33 limits written interrogatories to 25 per party.

1 court. But unless and until the parties know whose depositions they want to take and why, and
2 can assess whether the desired discovery could be obtained through less-burdensome means, there
3 is no basis for granting such unfettered discovery. *Cf., e.g., Nat. Res. Def. Council, Inc. v. Winter*,
4 No. 05-cv-7513, 2008 WL 11338647, at *2 (C.D. Cal. July 11, 2008) (denying party's motion for
5 leave to take 50 additional depositions, noting that "[c]ourts generally do not grant leave to take
6 additional depositions until the moving party has exhausted the ten depositions permitted as of
7 right," and that "the moving party must exhaust less expensive and burdensome means of
8 discovery before resorting to a request for relief" from Rule 30's limit).

9 Plaintiffs' premature request for approval to depose 40 to 50 or more current and former
10 Fannie Mae employees regarding Fannie Mae's REO maintenance practices is particularly
11 unreasonable given that plaintiffs base their claims on alleged "policies and practices set at a level
12 of Defendant's management with responsibility for Defendant's policies nationwide," and that
13 plaintiffs' alleged observations are "consistent in metropolitan areas regardless of their location."
14 (*E.g., Am. Compl.* ¶¶ 14, 78, 169.) Further, Plaintiffs do not "need more than one 30(b)(6)
15 deposition" of Fannie Mae. Each party is entitled to a single 30(b)(6) deposition of each other
16 party, and plaintiffs have identified no basis to serve more than one 30(b)(6) notice to Fannie
17 Mae, particularly where plaintiffs suggest a distinct 30(b)(6) deposition "regarding preservation
18 and location of documents" before plaintiffs have served any document requests, much less
19 shown any basis to question Fannie Mae's document retention. *E.g., In re Jemsek Clinic, P.A.*,
20 No. 07-bk-3006, 2013 WL 3994666, at *7–9 (Bankr. W.D.N.C. Aug. 2, 2013) (denying request
21 for Rule 30(b)(6) deposition on the topic of plaintiff's efforts to identify, collect, and produce
22 documents as irrelevant absent "real proof that documents and information were willfully
23 destroyed"). It is up to the deponent to determine whether multiple designees should provide
24 testimony in response to a single Rule 30(b)(6) deposition notice, but a Rule 30(b)(6) deposition
25 of a party counts as a single deposition nevertheless. *See* Fed. R. Civ. P. 30(a) advisory
26 committee's note (1993 Amendment) ("A deposition under Rule 30(b)(6) should, for purposes of
27 this [10-deposition] limit, be treated as a single deposition even though more than one person may
28 be designated to testify."); *Lehman Bros. Holdings, Inc. v. CMG Mortg., Inc.*, No. 10-cv-0402,

2011 WL 203675, at *2 (N.D. Cal. Jan. 21, 2011) (same).

9. Class Actions

If a class action, a proposal for how and when the class will be certified.

Not applicable.

10. Related Cases

Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.

Undersigned counsel are unaware of any related cases or proceedings.

11. Relief

All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

A. Plaintiffs' Position.

Plaintiffs submit that Defendant's housing practices have injured Plaintiffs by: (a) undermining Plaintiffs' education, advocacy, and training programs designed to promote fair housing and fair lending; (b) requiring Plaintiffs to divert scarce resources away from their usual activities and instead to devote substantial time to evaluating properties, reviewing data, interviewing witnesses, engaging in counteractive education and outreach campaigns, and developing educational materials to identify and address Defendant's racially discriminatory maintenance practices; (c) frustrating Plaintiffs' missions of increasing fair and equal access to housing for all Americans and in all neighborhoods, regardless of race, color, or national origin; (d) frustrating Plaintiffs' missions to eliminate racial segregation in their communities; (e) harming the communities that Plaintiffs serve; and (f) impeding Plaintiffs' community investment programs designed to stabilize neighborhoods of color and increase homeownership for all people in these same neighborhoods. Dkt. 39 at ¶ 188. An individualized recitation of the harm inflicted on each Plaintiff by Defendant's discriminatory maintenance and marketing practices is set forth in detail in the Amended Complaint in ¶¶ 187-292; *see also id.* at ¶¶ 26, 293-302, and Section

VII. Plaintiffs' damages will be supported by expert testimony on or before the deadline for expert reports.

B. Fannie Mae's Position.

Fannie Mae denies that plaintiffs are entitled to any relief whatsoever. First, for the reasons discussed above, Fannie Mae did not discriminate against minorities in any way with respect to the maintenance of its REO properties. (*See supra* Section 2.B.) Second, plaintiffs have not sustained damages caused by Fannie Mae.

Organizational plaintiffs may recover only actual damages resulting from a "diversion of resources," and from a "frustration of mission" specifically caused by the defendant's unlawful actions. (*See supra*, Sections 3.B, 4.B; *supra*, n.2.) Organizational plaintiffs are not entitled to recover amounts on behalf of their members without representational standing, and plaintiffs have conceded that they do not have representational standing to recover on behalf of the residents of the communities that were the subject of their investigation. Accordingly, plaintiffs cannot recover damages for harms allegedly suffered by such residents or communities, including damages based on diminished property values and alleged harms to residents' health and safety.

Because plaintiffs are only entitled to diversion of resources and frustration of mission damages, no expert testimony should be required to tabulate the amounts plaintiffs allegedly incurred in conducting the investigation, education, and outreach efforts alleged in the Amended Complaint.⁵ In any event, Fannie Mae denies that it caused plaintiffs any damages, and Fannie

⁵ Even if it were reasonable for plaintiffs to rely on expert testimony at trial to introduce evidence of damages, plaintiffs cannot withhold during fact discovery "the amount of any damages sought and a description of the bases on which damages are calculated." Standing Order for All Judges: Contents of Joint Case Management Statement, ¶ 11. *See also, e.g., Greater New Orleans Fair Hous. Action Ctr., Inc. v. Dorian Apartments, LLC*, No. 15-cv-6406, 2016 WL 6157534, at *4 (E.D. La. Oct. 24, 2016) (overruling organizational plaintiff's objection in FHA case that damages interrogatory was premature, compelling plaintiff to supplement its response "to reflect allocation of resources and how the expenditures were diverted from another effort to the present matter," and to "quantify [plaintiff's] claim for expenses in frustration of its mission, including future expenses") (internal marks omitted); *Corning Optical Commc'ns Wireless Ltd. v. Solid, Inc.*, 306 F.R.D. 276, 278–79 (N.D. Cal. 2015) (holding plaintiff's damages interrogatory response summarized as "wait until we serve our expert report" was "plainly insufficient," and compelling further interrogatory responses and Rule 26(a)(1)(A)(iii) disclosures identifying

1 Mae denies that plaintiffs are entitled to any relief whatsoever. Fannie Mae did not cause
2 plaintiffs to divert resources because plaintiffs would have undertaken the same industry-wide
3 investigation and outreach efforts regardless of Fannie Mae's alleged policy of delegating REO
4 maintenance functions to vendors, which is fundamental to each of plaintiffs' claims. Nor can
5 plaintiffs recover damages based on their various frustration-of-mission theories because any
6 alleged impediments to plaintiffs' community investments were not caused by Fannie Mae's
7 alleged policy of delegating REO maintenance functions to vendors. Further, to the extent Fannie
8 Mae's alleged policy had any harmful impact on the communities identified in the Amended
9 Complaint, these harms do not constitute diversion-of-resources or frustration-of-mission
10 damages recoverable under the FHA, the relationship between Fannie Mae's alleged policy and
11 the alleged harms is too remote to be actionable, and plaintiffs lack representational standing to
12 recover for such harms.

13 **12. Settlement and ADR**

14 *Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case,*
15 *including which ADR process option the parties have selected and a proposed deadline, or if the*
16 *parties do not agree, each party's preferred option and timing, in compliance with ADR L.R. 3-5.*
17 *In addition, the parties should include a description of key discovery or motions necessary to*
18 *position the parties to negotiate a resolution.*

19 This case has been assigned to the ADR Multi-Option Program, and the parties have
20 conferred about ADR processes in conformance with ADR L.R. 3-5. The parties are currently
21 engaging in independent settlement discussions. If the parties reach a point where it appears that

22 (1) the amount of damages plaintiff sought under each asserted damages theory,
23 (2) apportionment of damages among the defendants, (3) the time period for which plaintiff
24 sought damages, (4) witnesses and documents on which plaintiff intended to rely to support its
25 damages claim, and (5) other facts on which plaintiff based its damages claim). Allowing
26 plaintiffs to withhold such information is tantamount to permitting plaintiffs to circumvent Rule
27 11. *See, e.g., Nat'l Cmty. Reinvestment Coal. v. NovaStar Fin., Inc.*, No. CV 07-861 (RCL), 2009
28 WL 10719757, at *2 (D.D.C. July 13, 2009) (compelling organizational plaintiff in FHA case to
supplement responses to interrogatories seeking information relating to plaintiff's damages
claims, noting that "plaintiffs must have had some factual basis for concluding that they had
sustained losses at the time the complaint was filed as required by Rule 11") (internal marks
omitted).

1 ADR will increase the likelihood of resolving this matter, they will notify the Court. Fannie
2 Mae's position is that discovery into Plaintiffs' alleged damages, and possibly a Court ruling on
3 the categories and type of damages Plaintiffs may recover, will likely be needed before any
4 formal ADR.

5 **13. Consent to Magistrate Judge For All Purposes**

6 *Whether all parties will consent to have a magistrate judge conduct all further*
7 *proceedings including trial and entry of judgment. ____ YES X NO*

8 **14. Other References**

9 *Whether the case is suitable for reference to binding arbitration, a special master, or the*
10 *Judicial Panel on Multidistrict Litigation.*

11 The parties agree that this case is not suitable for reference to binding arbitration, a special
12 master, or the Judicial Panel on Multidistrict Litigation.

13 **15. Narrowing of Issues**

14 *Issues that can be narrowed by agreement or by motion, suggestions to expedite the*
15 *presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to*
16 *bifurcate issues, claims, or defenses.*

17 **A. Plaintiffs' Position.**

18 At this stage of the case, Plaintiffs do not propose any issues that can be narrowed by
19 agreement or motion, and disagree that the issues identified by Defendant below are able to be
20 narrowed.

21 **B. Fannie Mae's Position.**

22 Fannie Mae anticipates that the issues in this case can be substantially narrowed by
23 agreement or motion as follows:

24 (1) specifying the types of damages that plaintiffs may recover in this action in accordance
25 with Supreme Court precedent and other applicable law;

26 (2) specifying the statute of limitations cut-off applicable to plaintiffs' claims, which are
27 based on alleged conduct from 2011 to 2015, thus clarifying the scope of conduct for which
28 Fannie Mae is potentially liable and the potential damages in this case; and

1 (3) a determination of whether the plaintiffs visited too few properties in specific
2 metropolitan areas to support any statistically significant conclusions about alleged disparate
3 impacts in those metropolitan areas, precluding claims premised on alleged discriminatory
4 outcomes in those metropolitan areas.

5 (See *supra*, Sections 2.B, 3.B and 4.B.)

6 **16. Expedited Trial Procedure**

7 *Whether this is the type of case that can be handled under the Expedited Trial Procedure*
8 *of General Order 64, Attachment A. If all parties agree, they shall instead of this Statement, file*
9 *an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement,*
10 *in accordance with General Order No. 64, Attachments B and D.*

11 The parties agree that this case is not suitable for expedited trial procedures.

12 **17. Scheduling**

13 *Proposed dates for completion of initial ADR session, designation of experts, discovery*
14 *cutoff, hearing of dispositive motions, pretrial conference and trial.*

15 The parties propose the following schedule:

- 16 • Fact discovery cut-off: December 14, 2020
- 17 • Designation of experts and opening expert reports: February 3, 2021
- 18 • Rebuttal expert reports: April 12, 2021
- 19 • Discovery cut-off: May 27, 2021
- 20 • Motions for summary judgment: July 12, 2021
- 21 • Oppositions to motions for summary judgment: August 26, 2021
- 22 • Replies in support of summary judgment: September 16, 2021
- 23 • Hearing on dispositive motions: October 1, 2021, or as otherwise ordered by the
24 Court
- 25 • Pretrial conference: first Monday that falls at least 90 days after the Court's
26 order(s) on the parties' motions for summary judgment
- 27 • Trial: to be set by the Court

27 **18. Trial**

28 *Whether the case will be tried to a jury or to the court and the expected length of the trial.*

1 The parties anticipate a jury trial lasting approximately three weeks.

2 **19. Disclosure of Non-party Interested Entities or Persons**

3 *Whether each party has filed the “Certification of Interested Entities or Persons”*
4 *required by Civil Local Rule 3-15. In addition, each party must restate in the case management*
5 *statement the contents of its certification by identifying any persons, firms, partnerships,*
6 *corporations (including parent corporations) or other entities known by the party to have either:*
7 *(i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii)*
8 *any other kind of interest that could be substantially affected by the outcome of the proceeding.*

9 Plaintiffs and Fannie Mae have filed Certifications of Interested Entities or Persons as
10 required by Civil Local Rule 3-15. Plaintiffs certified that there are no interested non-party
11 persons, firms, partnerships, corporations, or other entities to report. Fannie Mae certified that the
12 following listed persons, associations of persons, firms, partnerships, corporations (including
13 parent corporations) or other entities (i) have a financial interest in the subject matter in
14 controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject
15 matter or in a party that could be substantially affected by the outcome of this proceeding: the
16 Federal Housing Finance Agency.

17 **20. Professional Conduct**

18 *Whether all attorneys of record for the parties have reviewed the Guidelines for*
19 *Professional Conduct for the Northern District of California.*

20 All attorneys of record for the parties have reviewed the Guidelines for Professional
21 Conduct for the Northern District of California.

22 **21. Other**

23 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this*
24 *matter.*

25 None.

1 Dated: December 6, 2019

By: /s/ Lila Miller

Lila Miller

2
3 Relman, Dane & Colfax PLLC
1225 19th St. NW, Suite 600
4 Washington, D.C. 20036
(202) 728-1888

5 Attorney for Plaintiffs National Fair
6 Housing Alliance, *et al.*

7
8 Dated: December 6, 2019

By: /s/ Danielle N. Oakley

Danielle N. Oakley

9
10 O'Melveny & Myers LLP
610 Newport Center Drive, 17th Floor
11 Newport Beach, CA 92660
(949) 823-6900

12 Attorney for Defendant Federal National
13 Mortgage Association

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IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

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ATTESTATION

I hereby attest that the other signatories listed, on whose behalf the filing is submitted,
concur in the filing's content and have authorized the filing.

Dated: December 6, 2019

O'Melveny & Myers LLP

By: /s/ Danielle N. Oakley
Danielle N. Oakley